

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Moldex Metric, Inc.,

Plaintiff,

v.

Civil No. 14-1821 (JNE/FLN)
ORDER

3M Company and 3M Innovative Properties
Company,

Defendants.

Moldex Metric, Inc., brought this action against 3M Company and 3M Innovative Properties Company (collectively, 3M) in June 2014. The next month, 3M filed a Motion to Dismiss the Complaint. Moldex Metric opposed the motion. It closed its memorandum by referring to an amended complaint: “3M’s motion to dismiss should be denied. Moldex has sufficiently pleaded all required elements of its antitrust, UCL, and malicious prosecution claims. If the Court finds to the contrary, Moldex [has] filed separately a proposed amended complaint setting forth additional allegations.” A declaration of one of Moldex Metric’s attorneys contained the proposed amended complaint. In the declaration, the attorney stated:

To the extent that the Court deems any of the averments of Moldex’s Complaint to require supplementation or amendment as a part of its ruling on 3M’s motion to dismiss, Moldex is prepared to do so, and pursuant to Rule 15 of the Federal Rules of Civil Procedure, Moldex tenders an Amended Complaint, which is attached hereto as Exhibit 18.

On the same day that Moldex Metric responded to 3M’s motion to dismiss, Moldex Metric filed an amended complaint and requested that a summons be issued. The next day, the clerk complied with Moldex Metric’s request for a summons.

Nine days after Moldex Metric had filed its amended complaint, the parties filed a Stipulation Regarding Amendment of Moldex's Complaint. The parties stated that 3M had moved to dismiss the original complaint; that Moldex Metric had filed a proposed amended complaint as an exhibit to its attorney's declaration, "intending to protect its ability to supplement and amend its Complaint should the Court believe the Complaint is otherwise insufficient and grants leave to Moldex to amend the Complaint"; that Moldex Metric had also filed the amended complaint; and that Moldex Metric "does not wish to amend its Complaint at this time, but only wishes to preserve its opportunity to re-plead in response to the Court's ruling on the pending Motion to Dismiss." The parties made the following agreements: (1) "Moldex shall withdraw its First Amended Complaint . . . and corresponding summons . . . and shall file an appropriate notice of withdrawal with the Court"; (2) "Moldex agrees that, pending the Court's ruling on 3M's Motion to Dismiss, the original Complaint shall remain the operative pleading"; and (3) "3M shall not thereafter contend as part of its pending Motion to Dismiss that Moldex has not adequately preserved Moldex's ability to seek leave to amend the Complaint."

On the same day that the parties filed the stipulation, Moldex Metric filed a Notice of Withdrawal of First Amended Complaint. After acknowledging 3M's motion to dismiss the original complaint and its filing of the amended complaint, Moldex Metric "withdr[ew] the First Amended Complaint and accompanying Summons . . . and request[ed] that the Court mark those ECF entries as 'Withdrawn' or 'Filed in Error'"

Less than two weeks later, 3M filed its reply memorandum. In it, 3M made a few references to Moldex Metric's "proposed amended complaint."

Without expressing an opinion as to the merits of 3M's motion, the Court grants Moldex Metric the opportunity to seek leave to amend. Within 14 days of the date of this Order, Moldex Metric shall serve and file a motion to amend if it intends to amend its complaint. The Court defers consideration of 3M's motion to dismiss pending resolution of Moldex Metric's anticipated motion to amend. If Moldex Metric does not seek leave to amend, then the Court will reschedule 3M's motion to dismiss.

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. The motion hearing on September 11, 2014, at 2 p.m. is CANCELLED.
2. Within 14 days of the date of this Order, Moldex Metric shall serve and file a motion to amend if it intends to amend its complaint.

Dated: September 5, 2014

s/Joan N. Erickson
JOAN N. ERICKSEN
United States District Judge